UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1996/NGO/61
27 March 1996

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 8 (a) of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Written statement submitted by Human Rights Watch, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[25 March 1996]

1. Torture and other cruel, inhuman and degrading treatment in detention have remained one of Human Rights Watch's focal concerns throughout the last year.

2. In Peru, torture remains rampant, in particular in connection with arbitrary detentions and the system of "faceless courts" implemented in 1992 to try cases of terrorism and treason. Lengthy periods of incommunicado police detention permitted under the faceless court system have led to increased reports of torture. Nor do these courts challenge the admissibility of statements produced under torture. Torture has included beatings, use of electric shocks, near-drownings, rape, rape with rifles, prolonged suspension by the arms bound behind the back, and death threats. The severity of the abuse seems to depend on the social class and resources of the victim. The public prosecutor's office, which is nominally required to safeguard the rights of detainees, is ineffective, in part because it is also responsible

for leading criminal prosecutions. A case in which the prosecutor notably failed to protect a victim was that of student Jhoel Huamán García, who was beaten to death by police in Cerro de Pasco on 26 May 1995. Contrary to the assurances given in a speech to the fifty-first session of the Commission on Human Rights by Peru's Justice Minister Fernando Vega, the faceless courts system has not been dismantled.

3. The special faceless courts set up under the anti-terrorist law of 6 May 1992, which allows suspects to be tried through one-way mirrors by prosecutors and judges whose identity is concealed, continued to violate the most basic due process guarantees. Secret military tribunals which hear cases under the Treason Law provide even fewer guarantees: only one of the panel of five judges is a lawyer, and the remainder are career officers in active service. Several thousand Peruvians have been detained without the benefit of basic due process guarantees under the faceless court system and Peruvian human rights organizations estimate that 700 have been unjustly convicted. Confessed guerrillas who gave themselves up under the 1992 Repentance Law implicated many innocent people in order to get their own sentences suspended or reduced. On 19 April 1995, the Peruvian Congress passed legislation abolishing the faceless courts for terrorism - but not treason - cases, to take effect on 15 October, on the grounds that the menace of political violence had abated. However, in September, the government majority in Congress extended the faceless courts' life until at least October 1996.

4. Prison conditions for those accused and convicted under these laws are harsh and access to prisoners held on terrorism or treason charges for human rights groups, such as Human Rights Watch/Americas, has been denied across the board by the Government since mid-1992. Lawyers have also been denied access to prisons. The Inter-American Commission on Human Rights, the only rights body that makes public reports of its visits that has been allowed to enter Puno's Yanomayo Prison, reported in 1993 "generalized conditions of extreme suffering".

5. In Turkey, torture and ill-treatment of pre-trial detainees are widespread, in particular in political cases and in the south-eastern part of the country where 10 provinces have been under emergency rule since 1987. The Turkish Criminal Code prohibits torture, but the law allows for extended periods of incommunicado detention and torture regularly occurs under these circumstances. In ordinary cases, once a person is arrested, he or she must be brought before a magistrate within 24 hours for an individual offence or within 4 days for an offence including conspiracy. However, if a person is likely to be tried before a so-called State Security Court, he or she can be held up to 48 hours for an individual offence and 15 days for a conspiracy; furthermore, permissible periods of incommunicado detention are doubled (i.e. 4 and 30 days respectively) in areas under emergency rule. Such long periods of incommunicado detention allow security forces - especially the political police and the Anti-Terror Branch of the Interior Ministry, and law enforcement officers in south-eastern Turkey - to detain and torture suspects for several days and then have a week or more to allow the individual to recover and for marks of torture to disappear before he or she is brought before a magistrate. Police officers often fail to register the detention of an individual, thus allowing police the opportunity to mistreat a detainee and deny that he was ever held.

6. Systematic torture is employed generally by political police or Anti-Terror sections and methods appear to be standardized. Suspects are often suspended by their arms, stripped naked, soaked with water, and subjected to low-voltage electric shocks. In addition, detainees often suffer beatings, sleep deprivation, poor or little food, temperature extremes, death threats, mock executions, and anal or vaginal rape with truncheons. Efforts are made to minimize the possibility of subsequent determination by doctors that torture had been applied. Thus, for example, falaka, the beating of the soles of the feet, was discontinued in Izmir, Turkey's third largest city, when local human rights groups and torture treatment centres started to use a sophisticated medical test that could prove that falaka had been employed months after the fact. Regular police also maltreat criminal suspects, but usually by administering crude beatings.

7. The problem has been acknowledged by some government officials, most recently in a January 1996 statement by Justice Minister Cilingiroglu. In March 1995, then Prime Minister Tansu Ciller reportedly issued an internal order to all police stations ordering them to remove "any equipment allowing ill-treatment (if there is any)". The State Minister responsible for human rights has also spoken out against torture, and in January 1996, the Ciller Government conducted a widespread investigation into the death in detention in Istanbul of Metin Goktepe, a journalist. But police are only occasionally brought to trial for torture and related abuse, and almost always are allowed out on bail during the legal proceedings, which often take years. Sentences - if handed down - are light, giving the police and officials in the Interior Ministry a sense of impunity.

8. Severe and rampant mistreatment of prisoners is not always associated with political imprisonment, and furthermore, it constitutes a problem also in countries that rarely or never come under the scrutiny of this Commission.

9. Prisoners in Japan experience routine violations of their human rights from the moment of arrest and initial detention in a police station through to the end of their incarceration. In a 1995 study of prison and detention conditions, Human Rights Watch found that abuses against prisoners were distressingly common.

10. While in police custody, criminal suspects are routinely subjected to daily interrogation sessions, often lasting 10 hours or more, whose purpose is to obtain a confession. Coercive techniques such as threats, deprivation of food or drink, and violence are used when a confession is not forthcoming. During these sessions, prisoners have no access to legal counsel.

11. In detention and prison facilities, many prisoners live in various forms of solitary confinement, completely isolated from other prisoners. A large proportion of the remaining prisoners live in single cells and can only speak to fellow prisoners at prescribed times. They all have extremely restricted contact with the outside world: family visits are conducted through a partition and severely limited in number and duration, and legal contacts are monitored or censored.

12. A plethora of prison rules regulates the lives of Japanese prisoners down to the most minute detail, controlling such matters as: where and how to

arrange every object in the cell (to the extent that one former prisoner told us that he could be punished for folding his pants unevenly), when and how to sleep, when and how to sit, and when and how to talk. And while prison rules are extremely detailed in prescribing prisoners' behaviour, they are quite vague in specifying punishments for their violation, leaving individual guards and wardens with a great deal of latitude. The result is arbitrary punishment and retaliatory treatment, including beatings, of prisoners perceived as defiant (i.e. those who speak out against abuses).

13. Certain groups of prisoners often face harsher treatment: those on death row, disabled prisoners, and immigration detainees. Death row prisoners, in particular, are not only condemned to solitary confinement while awaiting execution, but in the most striking indicator of the prison system's overall secrecy, they may learn of their upcoming death as little as an hour in advance.

14. In the United States, Human Rights Watch remains concerned about conditions in super-maximum security prisons, known also as "maxi-maxis". They are designed to house inmates who engage in disruptive behaviour at lower-security prisons. Human Rights Watch has found that prison officials enjoy a great deal of discretion in assigning prisoners to super-maximum facilities, with politically active prisoners and prisoners who challenge prison conditions in court singled out for transfer. Because placement in maxi-maxis is considered an administrative rather than a disciplinary measure, assignment is not preceded by a hearing and prisoners are not allowed to appeal the transfer decision.

15. Super-maximum prisons are characterized by a harsh environment and exceptionally intense security measures. In one institution visited by Human Rights Watch in 1995, the Maximum Control Centre in Westville, Indiana, prisoners reported that in the recent past prison officials physically abused inmates, intentionally kept the prison temperature uncomfortably cold, left bright lights on at all hours, and covered some cells' windows with black paint. While a lawsuit filed by a civil liberties organization has helped curb the worst abuses, we remain concerned at the suffering and lasting psychological damage that can result from the extreme isolation endured by prisoners at this and other maxi-maxis around the country. These concerns are made more acute in light of legislation pending in the United States Congress that would severely limit the ability of prisoners to bring lawsuits protesting abuses or poor physical conditions, in violation of the duty to provide effective remedy to human rights abuse.

16. In 1994 and 1995, Human Rights Watch Women's Rights and Prison Projects conducted an investigation into allegations of widespread sexual abuse and degrading treatment of women inmates in State prisons. We investigated institutions in California, Georgia, Illinois, Michigan and New York. We found that prison staff, particularly male corrections officers, often rape and sexually assault women inmates with impunity. Male guards corner and isolate women, demand kisses, hugs and sex, and fondle women's bodies under the pretence of conducting pat searches. Officers compel women to endure this degrading treatment by physical force, or by threatening to "make their time hard", to deny visits, to put them in solitary confinement, or even to harm their children. Investigations into reported abuses are often perfunctory,

and usually end as soon as the accused male staff member denies the allegations against him. Even in rare cases where charges of sexual misconduct do get substantiated, the abusers are rarely subject to criminal sanction. Often they are transferred to other prisons, and some are dismissed.

17. For several years now, a working group of the Commission has been striving to establish a global system of prison inspections, under the Convention against Torture. But the work has become mired in the efforts of some States to create a system that would be weak at best, and might actually prove counterproductive in preventing torture and promoting adherence to human rights standards in places of detention. It is very important that this system not end up a sham, giving States an excuse to fend off local NGOs attempts at obtaining access to prisoners or to exclude international organizations. It is of utmost importance that the basic provisions of the Draft Optional Protocol to the Convention against Torture contain the clause assuring that, once a State has ratified the Protocol, no prior consent by the State is needed for an inspection and no prisoner or place of detention can be excluded from such an inspection. Human Rights Watch calls on the Commission to take prompt steps to create an effective system for inspecting places of detention.